

Farm Service Agency, USDA

§ 718.207

(i) If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

- (1) Among family members;
- (2) By the estate method; and
- (3) When no sale or change in ownership of land occurs.

[61 FR 37552, July 18, 1996, as amended at 65 FR 65722, Nov. 2, 2000]

§ 718.206 Rules for determining allotments, quotas, and acreages when reconstitution is made by combination.

When two or more farms or tracts are combined for a year, that year's allotments, quotas, and acreages, with respect to the combined farm or tract, as required by applicable commodity regulations, shall not be greater than the sum of the allotments, quotas, and acreages for each of the farms or tracts comprising the combination, subject to the provisions of § 718.204.

[61 FR 37552, July 18, 1996; 61 FR 49049, Sept. 18, 1996]

§ 718.207 Eminent domain acquisitions.

(a) This section provides a uniform method for reallocating allotments and quotas, with respect to land involved in eminent domain acquisitions. Such allotments and quotas, in accordance with this section, may be pooled for the benefit of the owner who is displaced from the acquired farm by eminent domain acquisition. Such pooling shall be for a 3-year period from the date of displacement or during such other period as the displaced owner may request for the transfer of allotments and quotas, from the pool to other farms owned by such person.

(b) An eminent domain acquisition is a taking of title to land, or the taking of an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could

be, so taken under the power of eminent domain by a Federal, State, or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. An acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain.

(c) For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of the impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current titleholders cannot be considered the owner for the purpose of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) The owner shall be considered displaced from a farm which is subject to an eminent domain acquisition on the date:

- (1) The owner loses possession of the land;
- (2) The owner is voluntarily displaced if a binding contract for acquisition has been executed;

(3) The owner, in the case of a flowage easement, determines it is no longer practical to conduct farming operations on the land; or

(4) The owner loses possession of the land as lessee under a lease from the agency or its designee if the lease provided uninterrupted possession to the owner from the date of acquisition to the end of the lease or extensions of the lease.

(e) The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement within 30 days so that allotments and quotas may be pooled in accordance with this section. Failure to so notify the county committee shall result in the loss of the ability of the owner to extend the 3-year period of the pool.

(f) Whenever the county committee determines, by notice from the owner or otherwise, that an owner has been displaced from the farm, the county committee shall establish a pool for the allotments and quotas eligible for pooling under this section for a 3-year period beginning on the date of displacement. Pooled allotments and quotas shall be considered fully planted and, for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) Pooling is not permitted or required:

(1) If the county committee determines that an agency has authority under its eminent domain powers to acquire a farm for the continued production of an allotment or quota and does so acquire a farm only for such purpose and files a written notice with the county committee of the county in which the farm is located at the time of acquisition designating the allotment and quota to be produced on the farm, there shall be no pooling of such allotment and quota. Such farm allotments and quotas shall be established for the farm in accordance with applicable commodity regulations. For acreages, there shall be no pooling of the acreage under any circumstances if an agency acquires land and retains the land in an agricultural or related activity;

(2) If the displaced owner files written notice with the county committee

of an intention to waive the right to have all the allotments and quotas or any part thereof pooled and the county committee determines that the displaced owner has not been coerced to waive such right, the allotments and quotas shall be retained on the agency acquired land;

(3) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and quotas shall be retained on the portion of the farm not acquired by the agency and shall not be pooled;

(4) If an agency acquires part of a farm for non-farming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on a farm, the allotments and quotas attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. The amount of an allotment and quota which may be retained on the farm cannot exceed the land devoted to an agricultural or related activity. Allotments and quotas which are not retained shall be pooled; or

(5) If, prior to pooling, an owner files a request to transfer the allotments and quotas to other farms in the same county which are owned by such owner, the county committee may approve a direct transfer without the formal establishment of a pool. Such transfer shall be subject to the requirements of paragraph (j) of this section. This paragraph shall govern the release and reapportionment of pooled allotments and quotas notwithstanding other provisions of applicable commodity regulations.

(h) Pooled allotments and quotas may be released on an annual basis by the owner to a county committee during any year for which allotments and quotas are pooled and not otherwise transferred from the pool. The county committee may reapportion the released allotments and quotas to other farms in the same county that have allotments or quotas for the same commodity. Pooled allotments and quotas shall not be released on a permanent basis or surrendered after release to

the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices, and other physical factors affecting the production of the commodity. Pooled allotments and quotas which are released shall be considered to have been fully planted in the pool and not on the farm to which such allotments and quotas are reapportioned.

(i) Pooled allotments and quotas that may be transferred on a permanent or temporary basis by sale, lease, or by owner designation may be transferred permanently from the pool by the owner or temporarily for the duration of the pooled allotment or quota, subject to the terms and conditions for such transfers in the applicable commodity regulations. The transfer of tobacco acreage allotment or marketing quota shall be approved acre for acre.

(j) (1) The displaced owners may request a transfer of all or part of the pooled allotments and quotas to any other farm in the United States which is owned by the displaced owner, but only if there are farms in the receiving county with allotments and quotas, for the particular commodity or, if there are no such farms, the county committee determines that farms in the receiving county are suited for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committee mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) The displaced owner shall file with the receiving county committee written application for transfer of an allotment and quota from the pool within 3 years after the date of displacement. The application shall contain a certification from the owner that no agreement has been made with any person for the purpose of obtaining an allotment or quota from the pool for

a person other than for the displaced owner. The owner shall attach to the application all pertinent documents pertaining to the current ownership or purchase of land and any leasing arrangements, such as the deed of trust or mortgage, a warranty deed, a note, sales agreement, and lease.

(3) The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer. Such personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under paragraph (j)(5) of this section.

(4) The transfer from the pool will be approved by the receiving county committee only if the county committee determines that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations. The elements of such an acquisition shall include, but are not limited to, the following:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the displaced owner was the operator of the acquired farm at the date of displacement, such owner must personally operate and be the operator of the receiving farm for the first year that the allotment and quota is transferred;

(iii) If the displaced owner was not the operator of the acquired farm at the date of displacement and was not a producer on that farm because the leasing or rental agreement provided for

cash, fixed rent, or standing rent payment, such owner shall not be required to operate personally and be the operator of the receiving farm, but at least 75 percent of the allotments for the receiving farm must be planted on the receiving farm during the first year of the transfer. With respect to a commodity for which a quota is applicable but for which there is no acreage allotment, an acreage which is equal to the result of dividing the quota transferred to the receiving farms by the receiving farm's yield, multiplied by 75 percent must be planted during the first year of the transfer;

(iv) If the displaced owner was not the operator of the acquired farm at the date of displacement but was a producer on that farm at the date of displacement as the result of having received a share of the crops produced on the acquired farm, such displaced owner shall not be required to be the operator of the receiving farm but must be a producer on the receiving farm during the first year that an allotment or quota is transferred;

(v) The contractual arrangements between the displaced owner and the seller of the receiving farm must not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller. The seller or a person designated by or subject to the control of the seller may not lease the receiving farm for the first year the allotment or quota is transferred; and

(vi) The contractual arrangements under which the receiving farm was purchased or leased must be customary in the community where the receiving farm is located with respect to purchase price and timing and amount of purchase or rental payments.

(5) The approval by the receiving county committee of a transfer from the pool under this paragraph shall be effective upon concurrence by the State committee of the State where the receiving farm is located (the receiving State committee). Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that:

(i) The eligibility requirements of paragraph (j)(4) (ii), (iii) and (iv) of this section cannot be met without substantial hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which an allotment or quota is to be transferred; or

(ii) The owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish farming operations for the displaced owner, even if the farm is leased to the seller of the farm for the first year for which the allotment or quota is transferred.

(6) Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate notice of allotment and quota under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining the amount of the allotment and quota available for transfer, the receiving county committee shall consider the receiving tract as a separate ownership. The acreage transferred from the pool shall not exceed the allotments and quotas, most recently established for the acquired farm placed in the pool. When all or a part of the allotment and quota placed in the pool is transferred and used to establish or increase the allotment and quota for other farms owned or purchased by the owner, all of the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments and quotas to have been planted on the receiving farm for which an allotment and quota, are established or increased under this section. If only a part of the available allotment and quota is transferred from the pool, the remaining part of the allotment and quota, shall remain in the pool for transfer to other farms of the owner until all such allotments and quotas have been transferred or until the period of eligibility for establishing or increasing allotments and quotas under this section has expired.

(7) If any allotment or quota is transferred under this section and it is later determined by the receiving county or State committee, or by the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or that the conditions of paragraph (j)(4) of this section are not met, the allotment and quota for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the allotment or quota transferred from the pool. If the time period for the transfer of the allotment or quota from the pool has not expired, the amount of allotment or quota initially transferred from the pool shall be returned to the pool after the period of time has expired in which the displaced owner could exercise the right of administrative review. Any cancellation of the transfer of an allotment or quota by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county committee shall issue a notice of any marketing quota and penalty as may be required in accordance with applicable commodity regulations.

(8) If the displaced owner files a request for transfer of pooled allotments or quotas, within the prescribed period for filing such request, but the request for transfer is filed during a year in which all or a part of the pooled allotments or quotas were released to the transferring county committee pursuant to paragraph (h), the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of pooled allotment or quota involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment or quota for which the transfer is requested has been released to the transferring county committee for the current year.

(k)(1) When the displaced owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date

of the displacement of the owner from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If a portion of a farm is acquired by an agency and the owner is displaced therefrom, the acquired portion shall be constituted as a separate farm on the date of displacement unless the allotments and quotas are retained on the portion not acquired as provided in paragraphs (g) (3) and (4) of this section, in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(1)(1) The displaced owner may file with the county committee a written designation of beneficiary of the rights in the allotments and quotas attributable to the acquired land in the event of the death of the displaced owner, and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or negotiate a lease with the agency or its designee, the regular transfer rights with respect to farms owned by such beneficiary, and the release, sale, lease, and owner transfer rights under this section.

(2) If the displaced owner does not file a designation of beneficiary under paragraph (1)(1) and the displaced owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights provided under paragraph (1)(1) of this section:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship; and

(ii) The persons who succeed to the deceased displaced owner's interest under a will or by intestate succession. However, in the case of intestate succession, the person shall be limited to the surviving spouse, parent, sibling or child of the deceased displaced owner. In the settlement of the estate of the deceased displaced owner, the heirs may file a written agreement with the

county committee for the division of the deceased displaced owner's rights under this section.

(m)(1) No transfer from the pool under paragraph (h), (i), or (j) of this section shall be approved if there remains any unpaid marketing quota penalty due with respect to the marketing of the commodity from the acquired farm by the displaced owner, or if any of the commodity produced on the agency acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If an allotment or quota for an acquired farm next established after the data of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm, or as the result of a false acreage report, the allotment or quota shall be reduced in the pool in accordance with the applicable commodity regulations.

§ 718.208 Exempting Federal prison farms and Federal wildlife refuges.

A marketing penalty shall not be assessed with respect to any commodity which is produced on a Federal prison farm or Federal wildlife refuge. This exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and was produced on a Federal prison farm or Federal wildlife refuge.

§ 718.209 Transfer of allotments and quotas—State public lands.

(a) Transfers of allotments and quotas between farms in the same county may be permitted where both farms are lands owned by the State.

(b) An application requesting the transfer of one or more of the allotments and quotas on a farm entirely comprised of lands owned by a State shall be filed with the county committee by the State. The application shall identify the farms as being within the same county, show that each farm is entirely comprised of lands owned by the State, and list the allotments and quotas requested to be transferred. Additional information with respect to the present operations on the farms, including all leasing arrangements,

shall also be set forth in the application.

(c) The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the general planting date in the county for the commodity involved in the transfer.

(d)(1) Each transfer of an allotment and quota under this section shall be adjusted for differences in farm productivity if the yield projected for the year the transfer is to take effect for the farm to which transfer is made exceeds by more than ten percent the yield projected for the year the transfer is to take effect for the farm from which transfer is made. The county committee shall determine the amount of the allotment and quota to be transferred where a productivity adjustment is required to be made by dividing:

(i) The product of the yield for the farm from which the transfer is made and the acreage to be transferred from such farm, by

(ii) The yield for the farm to which the transfer is made.

(2) Acreage for the farm receiving the allotment or quota shall be adjusted by the same percentage as the allotment or quota being transferred is adjusted. The amount of the allotment and quota and related acreage transferred from the farm from which the transfer is made shall be the full amount, but the amount of all allotment or quota and related acreage for the farm to which the transfer is made shall be the adjusted amount.

(e) The amount of allotment and quota on a farm after a transfer under this section is made shall not exceed the average amount of allotment or quota of at least three farms with acreage of cropland similar to the farm receiving the transfer in the community having the applicable allotment acreage and quota on these farms.

(f) Each transfer of any allotment and quota shall be subject to the condition that an acreage equal to the allotment and quota transferred, before any productivity adjustment, shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made. The acreage to be devoted to and maintained in